



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/043,844	01/14/2002	Richard Jay	30314/89	1147

7590 08/13/2004

Neal L. Rosenberg, Esq.
AMSTER, ROTHSTEIN & EBENSTEIN
90 Park Avenue
New York, NY 10016

EXAMINER

TRAN, KHOA H

ART UNIT	PAPER NUMBER
----------	--------------

3634

DATE MAILED: 08/13/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/043,844

Applicant(s)

JAY, RICHARD

Examiner

Khoan Tran

Art Unit

3634

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 06 November 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-18 is/are pending in the application.
- 4a) Of the above claim(s) 17 and 18 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-16 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>11/06/03 & 6/16/04</u> . | 6) <input type="checkbox"/> Other: _____ |

Applicant filed an additional preliminary amendment on November 06, 2003, was not timely entered prior to an Office action was send out on November 19, 2003, which replies to the applicant response filed on August 11, 2003. Accordingly, the examiner is sending a supplementary Office action to address the preliminary amendment filed on November 06, 2003 as follows:

Newly submitted claims 17 and 18 are directed to a method claim of an invention that is independent or distinct from an apparatus claim invention. Since applicant has received an action on the merits for the originally presented invention of an apparatus claim, this invention has been constructively elected by original presentation for prosecution on the merits. Accordingly, claims 17 and 18 are withdrawn from consideration as being directed to a non-elected invention. See 37 CFR 1.142(b) and MPEP § 821.03.

Specification

The specification is objected to because on page 4, line 9, "male/female" should be --female/male-- because the forward engagement is a female engagement and the rear engagement is a male engagement. On page 8, at the beginning of line 19, numeral "0" should be deleted because it appears to be a typographical error. Appropriate correction is required.

Claim Objections

Claims 7 and 15 are objected to because there is no support for the forward engagement means being a male engagement and the rear engagement means being

Art Unit: 3634

a female engagement. See lines 16-18. Claims 5 and 13 are objected to because "male/female engagement" should be --female/male engagement--. Correction is required.

Claim Rejections - 35 USC § 112

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claims 1, 7, and 15 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claims contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed. In particular, the specification fails to provide any written description of what specific element constitutes the front and rear engagement means.

Claims 5 and 13 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claims 5 and 13 appear to be misdescriptive and/or inaccurate because the forward engagement means has been defined as a female engagement then on lines 3-4 of the claim the female engagement is inadvertently recited as the male engagement.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1, 3, 4, 7, 9, 11, 12, and 15 are rejected under 35 U.S.C. 102(e) as being anticipated by Primiano et al. (U.S. Patent No. 6,615,995). Primiano et al. disclose a depth-extendable display track unit (10) consisting of at least two essentially identical standard depth display tracks for forming a single depth extended display track, each of the essentially identical standard depth display track comprising:

a front section (12) having a stop means (34);

a rear end section (22) having a forward engagement means;

a breakaway back section (20) having a forward end and a rear end, see Figure 1, the forward end of the breakaway back section having a forward male engagement/connecting means of tongue members and the rear end of the breakaway back section having rear engagement/connecting means of grooves that connecting to the forward engagement means;

a plurality of interconnecting series of breakaway intermediate sections (14, 16, 18) connect with the front (12) and back (20) sections; each breakaway intermediate

section having a forward end and a rear end, the forward end of the breakaway intermediate section has a forward engagement means of tongue members and the rear end of the breakaway intermediate section has rear engagement means of grooves that engage with the forward engagement means;

Regarding claims 4, 7, and 12, Primiano et al. illustrate that at least one of the intermediate sections (18) is differing in depth from at least one other of the intermediate section (16), see Figure 1.

Claims 1, 2, 4, 5, 9, 10, 13, are rejected under 35 U.S.C. 102(b) as being anticipated by Flum et al. (U.S. Patent No. 5, 624,042). Flum et al. disclose a depth-extendable display track unit (10) consisting of at least two essentially identical standard depth display tracks detachably connected in side-by-side relationship for forming a single depth extended display track, each set of the essentially identical standard depth display track (10) comprising:

- a front section (16);

- a breakaway back section (14) having rearward male engagement means (38) and forward female engagement means (44);

- an interconnected series of breakaway intermediate sections (12, 16) connecting to the front and back sections having forward female engagement means (44) and rearward male engagement means (38), the rearward and forward engagement means are dimensionally configured and cooperatively forming a male and female engagement.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 6, 8, 14, and 16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Primiano et al. (U.S. Patent No. 6,615,995) as applied to claims 1, 3, 4, 7, 9, 11, 12, and 15 above, and further in view of Parham (U.S. Patent No. 6,325,221). Primiano et al. do not teach male and female engagement means disposed below a supporting surface. However Parham teaches a male (52) and female (60) engagement means disposed below a supporting surface, see Figures 2, 3, and 6. It would have been obvious to one of ordinary skill in the art at the time of the invention was made to modify the male and female engagement means of Primiano et al. to be located below the supporting surface as taught by Parham in order to form a continuous floor for slidably supporting articles thereon.

Response to Amendment

Applicant's arguments filed on August 11, 2003 have been fully considered but they are not deemed to be persuasive.

With respect to the drawing objection, applicant's explanation is found to be persuasive and therefore the drawing objection has been withdrawn.

With respect to applicant's request on page 4, first paragraph, that the examiner should point out in the reference of Primiano et al. any portion that suggests any segments of a second display track may be combined with a first display track, applicant's attention is directed to column 3, lines 20-24, wherein Primiano et al. state that more than one tracks (10) are interconnected in a side-by-side relationship.

Finally, applicant should note that it is the language of the claims that determines patentability for the disclosed invention and the law of anticipation only requires that a claim "read on" something disclosed in the prior art reference in order for anticipation to exist and it appears that the breakaway back section (20) meets the claim limitation as has been advanced by the examiner.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Khoa Tran whose telephone number is (703) 306-3437. The examiner can normally be reached on Monday through Thursday from 9:30 A.M. to 7:00 P.M.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Leslie Braun, can be reached on (703) 308-2156. The fax phone number

Art Unit: 3634

for this Group before a final Office action is (703) 872-9306 and after a final Office action is (703) 872-9327.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 308-2168.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Khoa Tran

July 6, 2004



LESLIE A. BRAUN
SUPERVISORY PATENT EXAMINER